



ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

2 Betty Schweickert (Estate)

Case No. 09CEPR00995

Atty Jaech, Jeffrey A. (for Craig C. Root – Executor/Petitioner)

(1) First and Final Account and Report of Personal Representative and Petition for Its Settlement; (2) for Allowance of Attorneys' Fees for Ordinary Services; and (3) for Final Distribution [Prob. C. 11640]

DOD: 11/09/09		CRAIG ROOT , Executor, is petitioner.	NEEDS/PROBLEMS/COMMENTS:
		Account period: 11/09/09 – 08/31/13	
Cont. from		Accounting - \$333,940.79	
<input type="checkbox"/>	Aff.Sub.Wit.	Beginning POH - \$359,687.51	
<input checked="" type="checkbox"/>	Verified	Ending POH - \$307,452.06	
<input checked="" type="checkbox"/>	Inventory	(\$193,452.06 is cash)	
<input checked="" type="checkbox"/>	PTC	Executor - waived	
<input checked="" type="checkbox"/>	Not.Cred.		
<input checked="" type="checkbox"/>	Notice of Hrg	Attorney - \$8,217.88 (less than statutory)	
<input checked="" type="checkbox"/>	Aff.Mail	w/o	
<input type="checkbox"/>	Aff.Pub.	Costs - \$460.50 (filing fees, certified letters)	
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.		
<input type="checkbox"/>	Conf. Screen	Petitioner states that the real property on hand for distribution has an estimated market value greater than the Inventory & Appraisal value (\$125,000 as opposed to \$110,000) and has calculated the distribution using the greater value pursuant to the agreement by the beneficiaries. Using this estimated market value for the real property results in the ending POH being \$322,452.06 of which \$193,452.06 is cash. This ending POH was used to determine the value of the distribution to each heir. Reappraisal for Distribution filed 10/02/13.	
<input type="checkbox"/>	Letters	01/19/10	
<input type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		
<input checked="" type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input checked="" type="checkbox"/>	FTB Notice	<p>Distribution, pursuant to Decedent's Will and agreement among the beneficiaries, is to:</p> <p>Ruth Root - \$90,641.58 cash, plus real property valued at \$125,000.00, a vehicle valued at \$2,000.00 and miscellaneous household items valued at \$2,000.00</p> <p>William Christopher Root - \$47,066.05 James Allen - \$15,688.69 Chantel Root - \$15,688.68 Craig C. Root - \$15,688.68</p>	

Reviewed by: JF

Reviewed on: 10/31/13

Updates:

Recommendation: SUBMITTED

File 2 – Schweickert

DOD: 10/15/11		PAUL GESTIC , Executor, is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
		Account period: 12/06/12 – 05/31/13	Continued from 7/30/13. Minute order states Mr. Williams appearing by court call. Mr. Williams informs the court that notice was given to the Franchise Tax Board last week. Mr. Williams requests a continuance to allow the FTB an opportunity to do what they need to do. As of 10/31/13 no additional documents have been filed.
Cont. from 073013		Accounting - \$237,500.00	<p>1. The petition proposes to distribute the assets of the estate to the decedent's surviving spouse, Jun Hawkins and states that she is a pretermitted heir of the decedent; however, decedent's will devised the residue of the estate to son, Larry Allen Hawkins (gift of principal residence to Arlene Hawkins is void due to divorce). No assignments or disclaimers of interest have been filed in this matter. Need authority and/or more information regarding the proposed distribution to Jun Hawkins.</p>
<input type="checkbox"/>	Aff.Sub.Wit.	Beginning POH- \$237,500.00	
<input checked="" type="checkbox"/>	Verified	Ending POH - \$237,500.00 (no cash)	
<input checked="" type="checkbox"/>	Inventory		
<input checked="" type="checkbox"/>	PTC	Executor - waives	
<input checked="" type="checkbox"/>	Not.Cred.		
<input checked="" type="checkbox"/>	Notice of Hrg	Attorney - \$7,750.00	
<input checked="" type="checkbox"/>	Aff.Mail	(statutory, waived subject to the approval of the transfer of the estate to the decedent's surviving spouse, Jun Hawkins)	
	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen	Distribution, pursuant to ???, to:	
	Letters	Jun Hawkins - \$237,500.00	
	Duties/Supp	(real property and household furnishings)	
	Objections		
	Video Receipt		
	CI Report		
<input checked="" type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
<input checked="" type="checkbox"/>	FTB Notice		

Reviewed by: JF for hearing on 7/30/13
Reviewed on: 10/31/13 (KT)
Updates:
Recommendation:
File 5A – Hawkins

5B Lawrence Eugene Hawkins (Estate)**Atty Williams, Steven R. (for Executor Paul Gestic)****Atty Winter, Gary (for Objector Arlene Hawkins)****Case No. 12CEPR00970****Petition to Determine Person Entitled to Distribution of Estate by Surviving Spouse**

DOD: 10/15/2011	JUN HAWKINS , surviving spouse, is petitioner.	NEEDS/PROBLEMS/COMMENTS: Continued from 10/2/13. Minute order states Ms. Wittig is appearing via court call. Parties agree that Mr. Winter does not need to prepare an opposition at this time. As of 10/31/13 no additional documents have been filed. 1. Attorney Steven R. William is the attorney for the Executor Paul Gestic. It appears he is also representing the beneficiary/surviving spouse, Jun Hawkins. This appears to be a conflict of interest. 2. Need proof of service of the Notice of Hearing along with a copy of the Petition on: a. Gary L. Winter (attorney for Arlene Hawkins) - Pursuant to the Requests for Special Notice. 3. Order apportions the expenses of administration and debts of decedent 94.39 % to Jun Hawkins and 5.61% to Larry Hawkins. The expenses of administration come from the estate not the beneficiaries and if they do come from the beneficiaries it is only to the extent of the value of the property they receive. In addition, they have to agree to take the property subject to paying the expenses. Otherwise the property is sold and the costs of administration are paid from the proceeds of the sale.
Cont. from 100213	Petitioner states the decedent left an estate consisting of real property. The property was acquired by the decedent prior to the marriage to the petitioner and paid for in part as the result of the joint efforts of the marriage. Petitioner alleges the property is partially separate property and partially community property.	
<input type="checkbox"/> Aff.Sub.Wit.		
<input checked="" type="checkbox"/> Verified		
<input type="checkbox"/> Inventory		
<input type="checkbox"/> PTC		
<input type="checkbox"/> Not.Cred.		
<input checked="" type="checkbox"/> Notice of Hrg	The property was appraised at \$230,000.00. The property has a current unpaid principal balance of \$275,439.07 with a past due balance of \$13,138.49.	
<input checked="" type="checkbox"/> Aff.Mail	W/	
<input type="checkbox"/> Aff.Pub.		
<input type="checkbox"/> Sp.Ntc.		
<input type="checkbox"/> Pers.Serv.	The following principal reductions were made during the following periods:	
<input type="checkbox"/> Conf. Screen	a. Purchase date to prior to marriage - \$3,251.78	
<input type="checkbox"/> Letters	b. Date of Marriage to date of death - \$15,809.10	
<input type="checkbox"/> Duties/Supp	c. After date of death - \$9,938.05	
<input checked="" type="checkbox"/> Objections		
<input type="checkbox"/> Video Receipt	Decedent left personal property consisting of the household furniture and furnishings that was acquired during the marriage as a result of the petitioner and decedent's joint efforts.	
<input type="checkbox"/> CI Report		
<input type="checkbox"/> 9202		
<input checked="" type="checkbox"/> Order	Petitioner and decedent were married on 11/18/2008. The Will admitted to probate dated 3/16/2006 devised the real property to beneficiaries other than petitioner. [Arlene Hawkins (decedent's former spouse) with the residue to Larry Hawkins, decedent's son.] Please see additional page	Please see additional page
<input type="checkbox"/> Aff. Posting		Reviewed by: KT
<input type="checkbox"/> Status Rpt		Reviewed on: 10/31/13
<input type="checkbox"/> UCCJEA		Updates:
<input type="checkbox"/> Citation		Recommendation:
<input type="checkbox"/> FTB Notice		File 5B – Hawkins

As an omitted spouse, petitioner is entitled to a share of the estate under Probate Code §21610.

Petitioner states that in determining the respective separate or community property interests of the parties entitled to distribution by reason of the principal reductions against the encumbrances secured by the real property the equity gained before the marriage of \$3,251.78 would be equally shared by Petitioner and decedent's son. The reductions made during the term of the marriage of \$15,809.10 would appropriately be allocated to petitioner and the post-death principal reductions would also be appropriately allocated to petitioner to provide for a 94.39% interest in the real property to be distributed to petitioner and a 5.61% interest to the decedent's son.

Petitioner prays that the Court determine the persons who are entitled to distribution of decedent's estate, and specifically determine as follows:

1. That the above described personal property is the community property of Petitioner and decedent, the one half of it belongs to petitioner and that Petitioner is entitled the decedent's ½ community interest.
2. The separate property interest, if any of the decedent; the community property interest of Petitioner and decedent and/or separate property interest of Petitioner in the above-described real property.

Objections of Arlene Hawkins to Petition to Determine Persons Entitled to Distribution of the Estate filed by Arlene Jones Hawkins on 9/27/13. Objector alleges that she is the sole beneficiary of the specific gift of decedent's principal residence. Objector states the property was the sole property of the decedent, it was purchased by the decedent prior to his marriage to Jun and was solely vested in the decedent's name. For the purpose of determining the character of the real property there is a rebuttable presumption that the character of the property is as set forth on the deed. This presumption may be rebuttable only by clear and convincing evidencing proof. The petition provides no evidence to rebut and does not even allege that the property was in some way transmuted to community property.

Petitioner contends that Jun's statutory share is one half of decedent's community property and one half of decedent's separate property. Therefore Arlene is entitled to one half of the residence. Decedent's residence was Decedent's separate property prior to and during the marriage to Jun. Decedent's earnings were presumed community and the petition provides evidence of principal reduction as a result of the community earnings during the marriage in the amount of \$15,809.10. Any such principal reduction may be characterized as pro tanto interest of the community.

Under Probate Code §26210, Jun is only entitled to one-half of the Decedent's community property. Decedent specifically devised the residence to Arlene and Arlene contends that as with the separate portion of the residence, she is entitled to one-half of the community property in the residence.

Objector contends that she should be awarded any costs under Probate Code §1002 and in equity should be reimbursed her fees because requiring her to incur fees would be contrary to Decedent's intent.

Objector prays for an Order:

1. Decedent's real property, located at 2075 E. Eclipse in Fresno is the Decedent's principal residence described in the Decedent's Will;
 2. The residence is the separate property of the Decedent;
 3. Principal reduction of the residence during the marriage is community property;
 4. Arlene Jones Hawkins is the sole named beneficiary of Decedent's residence under the terms of the Will;
 5. Jun Hawkins' statutory share as omitted spouse is one-half of Decedent's community property and one-half of Decedent's separate property;
 6. As the sole beneficiary and devisee of Decedent's residence, and subject to Jun Hawkins' one-half statutory share, Arlene Jones Hawkins is entitled to and should be distributed one-half of Decedent's residence under the terms of Decedent's Will;
 7. Arlene Jones Hawkins is a prevailing party under this proceeding and entitled to an award of costs under Probate Code §1005.
 8. Arlene Jones Hawkins is, in equity, entitled to be reimbursed her attorney fees.
-

NEEDS/PROBLEMS/COMMENTS (cont.):

4. The real property is the separate property of the decedent because it was acquired prior to the marriage. Petitioner states she has a community interest in the real property because during the 3 year marriage the mortgage was paid with community property funds. This is correct. She does have a community interest in the property. However, there is not enough information in the pleadings to determine the community property interest. Petitioner will need to provide the court with amount of the down payment on the property, the full amount of the loan on the property and the community payments made on the loan that reduced the principal balance of the loan.

Petitioner states the encumbrances on the property total \$275,439.07 with an outstanding balance of \$13,138.49 and the appraised value of the property is \$230,000.00. She states \$15,809.10 was paid using community funds to reduce the mortgage on the property. Family Code § 2622 (b) states to the extent that community debts exceed total community and quasi-community assets, the excess of debt shall be assigned as the court deems just and equitable, taking into account factors such as the parties' relative ability to pay.

Pursuant to Probate Code §21610 petitioner is entitled to an intestate share of the estate as an omitted spouse. Therefore, once the community interest is determined, she would be entitled to the community interest in the property, if any, and a ½ interest in the separate property. With regards to the mortgage payments paid after the date of death, they may be considered costs of administration and reimbursable to her. However, since Petitioner has been living in the home the amounts paid could also be considered rents for the occupancy of the property.

Note: It appears that pursuant to Prob. Code, § 6122 the specific gift to former spouse/objector Arlene Jones Hawkins is void. Probate Code §6122 (a) states unless the will expressly provides otherwise, if after executing a will the testator's marriage is dissolved or annulled, the dissolution or annulment revokes all of the following: (1) Any disposition or appointment of property made by the will to the former spouse.

Marie DOD: 09/25/09		WILLIAM M. SHIBA , successor trustee, is petitioner. Petitioner states: 1. Petitioner is the son of WILLIAM (BILL) SHIBA and MARIE HARUKO ("Settlers") and named as Successor Trustee of the SHIBA FAMILY TRUST (the "Trust") created by Settlers on 05/01/06. The Trust is now irrevocable. Petitioner is a beneficiary of the Trust. 2. The Settlers held discussions with family members regarding their desire to create and fund a Trust. One family member, an attorney, volunteered to draft a trust and complete the necessary paperwork. Unfortunately, he was not familiar with trusts and a number of blunders were made during the crafting of the trust. While the trust instrument and the effort to effectuate this wish was "botched" it was abundantly clear to family members, including Petitioner, that it was the Settlor's wish and intent to create and fund their trust. 3. Petitioner contends that it was the Settlor's intent to transfer their personal residence into the Trust. The evidence of their intent is the fully executed quitclaim deed dated 05/01/06 and recorded 03/23/10 which expressed their intention to transfer the residence into the Trust. 4. Petitioner contends that the author of the quitclaim deed erred when he drafted said deed and failed to name the vesting party as the trustees in that document. The author described the vesting party as the SHIBA FAMILY TRUST rather than WILLIAM (BILL) SHIBA and MARIE HARUKO SHIBA, as trustees of the SHIBA FAMILY TRUST. As a consequence of this vesting error the deed was ineffective to convey the property to the Trust. 5. Petitioner requests the Court to deem the real property included in the decedent's trust and enter an order effecting that conveyance. Petitioner prays for an Order that: 1. The residential real property be ordered vested in the name of the Petitioner, William M. Shiba, successor trustee of the Shiba Family Trust dated 05/01/06.	NEEDS/PROBLEMS/COMMENTS:	
William DOD: 07/04/12				
Cont. from				
	Aff.Sub.Wit.			
✓	Verified			
	Inventory			
	PTC			
	Not.Cred.			
✓	Notice of Hrg			
✓	Aff.Mail			w/
	Aff.Pub.			
	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen			
	Letters			
	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
	9202			
✓	Order			
	Aff. Posting			
	Status Rpt			
	UCCJEA			
	Citation			
	FTB Notice			

Reviewed by: JF
Reviewed on: 10/31/13
Updates:
Recommendation:
File 9 – Shiba

Atty Teixeira, Stanley, sole practitioner (for Victoria L. Reyes and Stephanie E. Callahan)
 Atty Sharbaugh, Catherine (Court-appointed for Conservatee)

Status Hearing Re: Filing of the First Account

Age: 77 years		<p>VICTORIA L. REYES and STEPHANIE E. CALLAHAN, daughters, were appointed Co-Conservators of the Estate on 8/22/2012.</p> <p>Letters of Conservatorship issued 8/23/2012 impose the following conditions: Co-Conservators, Victoria L. Reyes and Stephanie E. Callahan, are both required to be signers on all bank accounts for Barbara Jean Quintana. The Co-Conservators may independently sign checks and other negotiable instruments. However, they both must concur in every such exercise of power per Probate Code § 2105(c)(1).</p> <p>Minute Order dated 8/22/2012 from the hearing on the appointment of conservator of the estate set this Status Hearing for the filing of the first account.</p> <p>Final Inventory and Appraisal filed 12/3/2012 shows an estate value of \$7,617.91 consisting of cash and household furnishings/furniture.</p> <p>Court Investigator Jennifer Daniel's Annual Review was filed 3/5/2013.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Continued from 11/5/2013.</p> <p>1. Need first account of the conservatorship estate, or verified status report and proof of service of notice of the status hearing pursuant to Local Rule 7.5(B).</p> <p>Note: Declaration of Stanley Teixeira filed 10/23/2013 states he anticipates he should have the accounting prepared and filed no later than 11/5/2013.</p>
Cont. from 102413			
Aff.Sub.Wit.			
Verified			
Inventory			
Status Rep	X		
Not.Cred.			
Notice of Hrg			
Aff.Mail			
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.			
Conf. Screen			
Letters			
Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
Order			
Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			
		<p>Reviewed by: LEG</p> <p>Reviewed on: 10/29/13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 12 – Quintana</p>	

**Notice of Motion and Motion for Distribution of Funds Received from CalSTRS by
Guardian of the Person to be Paid to the Parent, Tony Navarro, for the Minor's
Benefit**

Age: 7		TONY NAVARRO , Father, is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
		JENNIFER SANCHEZ , Maternal Aunt, was appointed Guardian of the Estate on 3-6-13 without bond, funds blocked.	Note: This matter will be heard at 8:30 am in Dept. 52 (Main Courthouse)
Cont from 090513, 101013		Petitioner states the mother died in December 2012. At the time of her death, there was litigation pending between the parents re child support. Said litigation has spanned a period of several years culminating in an order of primary custody to Petitioner at the time of the mother's death. Petitioner requests the Court take Judicial Notice of the underlying litigation in 08CEFL00595. A joinder against Ms. Sanchez has recently been issued. That matter is still pending.	Note: Although Mr. Navarro filed this petition and is therefore the "Petitioner" in the matter before this Probate Court at this time, it appears that in his documents he refers to himself as the "Respondent" and to Ms. Sanchez as "Petitioner," as is the practice in Family Law litigation. Examiner notes this observation simply to avoid confusion in reading the Examiner Notes, which refer to the <i>party bringing the petition</i> as the "Petitioner."
<input type="checkbox"/>	Aff.Sub.Wit.		
<input checked="" type="checkbox"/>	Verified		Minute Order 9-5-13: The Court dispenses with notice as to item #2 in the examiner notes. The Court considers Mr. Navarro's filing to be a petition requiring additional fees. Mr. Porter withdraws his request for judicial notice. Matter is continued to 10/10/13. The hearings set for 9/6/13 are vacated and rescheduled for 10/10/13. Continued to 10/10/13 at 9am in Dept 303.
<input type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC		Minute Order 10-10-13: Matter continued to 11-5-13 at which time the Court will render its ruling. Continued to 11-5-13 at 8:30 am in Dept. 52.
<input type="checkbox"/>	Not.Cred.		
<input checked="" type="checkbox"/>	Notice of Hrg		Reviewed by: skc
<input checked="" type="checkbox"/>	Aff.Mail	W	
<input type="checkbox"/>	Aff.Pub.		Reviewed on: 10-31-13
<input type="checkbox"/>	Sp.Ntc.		Updates:
<input type="checkbox"/>	Pers.Serv.		Recommendation:
<input type="checkbox"/>	Conf. Screen		File 1 – Navarro
<input type="checkbox"/>	Letters		
<input type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		
<input type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
		Petitioner states the CalSTRS payments for the child were ordered on an ex parte basis on 5-8-13 to be received by the Guardian of the Estate and deposited to blocked account.	
		Petitioner states the funds are for the benefit of the child and should be utilized for the care of the child. At the 3-26-13 hearing wherein Ms. Sanchez was originally appointed as Guardian of the Estate without bond, Counsel for Petitioner objected as to the ongoing monthly benefit payments, specifically CalSTRS benefits, being paid to her rather than to the father. At that time, she had not contacted CalSTRS and was not certain such benefit would be subject to the guardianship estate.	
		Now, precisely as predicted at that hearing, Petitioner is forced to bring the instant motion to obtain this monthly payment to pay for expenses for the child. Petitioner is the sole surviving parent, is a self-employed contractor and has an average monthly income less than the equivalent of full time minimum wage.	
		SEE ADDITIONAL PAGES	

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Petitioner states that while he is married and his current wife does earn sufficient income to support the household, the ongoing support and care of the minor child is NOT the legal responsibility of his spouse.

Petitioner states he is among the persons authorized by law to receive the benefits on behalf of the child. California Education Code §23855 and 23856 cited.

Petitioner states that if no guardianship of the estate had been established, he would be entitled to receive this benefit. However, the code does not designate as to who would have priority between a guardian of the estate and a parent having custody. Petitioner contends that the present situation makes absolutely no logical sense, nor would it be just or equitable to allow the guardian of the estate, who was appointed to oversee assets such as the decedent's vehicle, bank accounts, and various items of furnishing or other personal property, to have exclusive control over a monthly survivor benefit for the benefit of the child.

Petitioner states it seems quite clear that the monthly allowance from CalSTRS was intended to be an ongoing payment for the surviving children's health, well-being, and support. If such funds were intended to be accumulated into a blocked account as an investment for the child, then it would be much more logical that such sum would be awarded as a lump sum. As such, funds intended to provide for the child's ongoing needs should be paid to Petitioner.

Petitioner prays that the Court issue an order that the Guardian of the Estate pay forthwith to Petitioner fbo the minor child all sums received from the California State Teachers' Retirement System (CalSTRS) after such sums have been placed into a blocked account pursuant to this Court's order of 5-8-13.

Jennifer Sanchez, Guardian of the Estate, filed a Reply on 8-27-13. Ms. Sanchez states she is also the trustee of a living trust executed by the mother. The parents had a contentious relationship until the mother's death, and at her death, Petitioner sought to join Ms. Sanchez, as trustee of the trust, into the existing family law matter. During the family law proceeding, he sought modification of a child support order for \$241/month.

Ms. Sanchez states that immediately after the mother's death, Petitioner sought to obtain her trust assets for the minor's support through a motion for joinder. Although successful in joining her, as trustee, for a very limited purpose (to obtain reimbursement for one-half unpaid health and child care benefits from date of death), no ongoing support order was made against the mother which would now authorize a claim against the trust, nor the assets of this guardianship proceeding. On 7-30-13, Petitioner filed a Notice of Appeal of the court's order in the family law proceedings. That matter is currently pending.

The Reply states that the CA Education Code referenced was the basis for this court's order authorizing the guardian to receive the CalSTRS benefits as guardianship assets. Petitioner's moving papers fail to disclose the fact that he is receiving Social Security Survivor benefits for the support of the minor. Ms. Sanchez believes those are approx. \$300/month, which is more than the amount that he previously paid the mother in child support.

SEE ADDITIONAL PAGES

Page 3

Re a guardian's use of guardianship assets to support a child: It is the parents, not the guardian, who has a duty to provide financial support for the minor. Authority cited. Because a parent has the legal obligation to support his or her minor child, the minor's assets are to be preserved until he or she attains majority, if the minor has a parent available to provide support. As a matter of almost universal court policy, the guardian may not use guardianship assets without prior court approval, and **unless the minor's parents are deceased or unavailable, approval is given only in extraordinary circumstances.** (Probate Code §2422; Family Code §3902; CEB 10.20, 10:24).

Ms. Sanchez states Petitioner is responsible for support of his child. Petitioner seeks a turnover of all CalSTRS benefits on a monthly basis for his use, without establishing that guardianship assets should be available to him, or the legal grounds under which he is somehow entitled to these assets. He has attempted for more than four years to obtain assets of the decedent. He was successful in reducing his child support obligation to her shortly before she died. Through an appeal on the family law proceeding, an objection to the establishment of the guardianship proceeding, and now this motion to gain access to the assets, he continues the vindictive and malicious attack on the decedent. His recent actions explain exactly why the mother carefully executed her estate plan prior to her death, to place a trusted family member in charge of assets which will ultimately be transferred to the minor in adulthood.

Petitioner fails to show facts sufficient to compel Ms. Sanchez to furnish support under Probate Code §2404. Ms. Sanchez is informed and believes that Petitioner's household income exceeds \$100,000.00 and that he has an ownership interest in at least one home and one rental property. At no time has he spoken to Ms. Sanchez re specific needs for which additional funds are needed. He has not spoken to her at all.

Guardianship assets currently total approx. \$53,157.00. These funds should be preserved for the minor. Should Petitioner bring a petition under §2404 and establish need for support, maintenance, education, or special needs that cannot otherwise be met by the father, Ms. Sanchez shall readily comply with any court order regarding same. She shall also request appointment of a Guardian Ad Litem for the minor to investigate the facts alleged in such a petition.

Attached to the Reply is a copy of the 4-30-13 Findings and Order in 08CEFL00595

Ms. Sanchez requests the motion be DENIED.